IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WP(C).No. 14006 of 2007(P)

CC.706/2004 of J.M.F.C.,CHALAKUDY
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PETITIONER:

SHAJAHAN, S/O.MOHAMMED HANEEFA,
SHAJNA MANZIL, KANYAKULANGARA (P.O),
VEMBAYAM, THIRUVANANTHAPURAM.

BY ADV. SRI.C.K.ABDUL RAHIM

RESPONDENTS:
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1. REXON SIMETHI, S/O.ANTONY SIMETHI,
KAVALAPARAMBIL HOUSE, KADUKUTTY DESOM,
K.V.MURI VILLAGE, MUKUNDAPURAM TALUK,
REP. BY HIS POWER OF ATTORNEY HOLDER,
SHRI.NEWTON SIMETHI, -DO-

2. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.JIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P(C).No.14006 of 2007

Dated this the 24th day of May, 2007

JUDGMENT

Petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. Cheque is for an amount of Rs.3 lakhs. The cheque was allegedly issued for the due discharge of a legally enforcible debt/liability. The accused owe the said amount to the complainant. This is the specific allegation in the complaint.

2. The cheque was dishonoured. Notice of demand was duly sent and received by the petitioner. He did not allegedly send any reply. The complaint was filed by the complainant. He had to leave India during the pendency of the proceedings. Power of attorney holder was examined on behalf of the complainant. The matter reached the stage of defence evidence. Even at that stage, no application was filed to send the cheque to the expert. Witnesses were examined. At the fag end, there was an attempt to send the cheque to the expert. There is no dispute regarding the signature. The attempt, it would appear, is to get the other writings in the cheque examined by the expert.

3. The learned Magistrate by the impugned order rejected the prayer and dismissed the application. It was held by the learned Magistrate that he is not satisfied that the discretion under Section 254(2) Cr.P.C deserves to be exercised in favour of the petitioner.

4. The petitioner claims to be aggrieved by the rejection of his prayer to send the cheque to the expert. He has come to this Court with this petition under Article 227 of the Constitution to invoke the constitutional jurisdiction of this Court.

5. The court prescribes a procedure to be followed and the methods to remedy the grievances. Of course, powers under Article 227 of the Constitution are available to the Court to ensure that the interests of justice do not fail. The law frowns upon challenge against interlocutory orders, which do prolong and protract the proceedings. Normally such an interlocutory order must wait for its challenge along with the final order in the proceedings to be passed by the Magistrate. Where exceptional grounds are shown to exist and failure of justice is a real and reasonable possibility, the jurisdiction under Section 482 Cr.P.C or Article 227 of the Constitution are, of course, available to the Court to ensure the interests of justice. Having gone through the entire details available in this case, I am not persuaded to agree that either the extraordinary inherent jurisdiction under Section 482 Cr.P.C or the constitutional jurisdiction under Article 227 of the Constitution deserves to be invoked. I shall carefully avoid any detailed expression of opinion on the merits of the dispute. Suffice it to say that this Writ Petition is not entitled to succeed.

6. In the result, this Writ Petition is, dismissed. However, I may hasten to observe that the dismissal of this Writ Petition will not in any way fetter the rights of the petitioner to challenge the impugned order, if the same be necessary, along with the final order to be passed by the learned Magistrate in the prosecution against him.

(R.BASANT, JUDGE)

rtr/-